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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Y.M.,

Plaintiff and Respondent,

v.

ROBIN JAMES MITCHELL,

Defendant and Appellant.

E069623

(Super.Ct.No. SWV1700945)

OPINION

APPEAL from the Superior Court of Riverside County. James T. Warren, Judge.
(Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art.
VI, § 6 of the Cal. Const.) Affirmed.

Robin James Mitchell, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Robin James Mitchell appeals the grant of a restraining order issued pursuant to the Domestic Violence Prevention Act (DVPA order) ordering her to keep 100 yards away from plaintiff and respondent Y.M. Robin and Y.M. were married in December 2016 and lived in a home in Perris along with Mitchell's three

children, ages 16, 18 and 20. On October 27, 2017, Y.M. filed a request for a temporary restraining order against Mitchell to stay away from Y.M., Y.M.'s home, and Y.M.'s job based on her allegation that Mitchell had pulled a gun on her and said she was going to shoot her "fucking ass." After a hearing, the DVPA order was granted, expiring on November 16, 2020.

On appeal, Mitchell insists the trial court erred by granting the DVPA order, relying upon a police report that was not lodged with the court nor given to Mitchell for her review. Y.M. has not filed a response. We conclude that the record is insufficient for this court to grant relief on appeal.

FACTUAL AND PROCEDURAL HISTORY

On October 27, 2017, Y.M. requested a domestic violence restraining order against Mitchell. She attested that she and Mitchell were married and lived together in Perris. She sought an order for Mitchell to stay away from her, her home, job, vehicle and her school. Y.M. also sought a move-out order for Mitchell to leave their home in Perris. She also attested that Mitchell owned a gun, which was taken by the police on October 26, 2017.

Y.M. provided a declaration as to the abuse that occurred. On October 26, 2017, Y.M. was outside the Perris home with the couple's dog. Mitchell pulled out a gun and pointed it at her. Mitchell took Y.M.'s wallet out of Y.M.'s car. Y.M. asked Mitchell if she was going to shoot her, and Mitchell responded, "I'm going to shoot your fucking ass." The police arrived and took a report. Mitchell was placed under citizen's arrest and charged with violating Penal Code section 417, subdivision (a)(2). In addition, Mitchell

had sent Y.M. text messages telling her to do both of them a favor by overdosing on pills. Other messages told Y.M. to die or kill herself. During a telephone call, Mitchell threatened to shoot Y.M.

A temporary restraining order against Mitchell in favor of Y.M. was granted on October 27, 2017, and a hearing was set for November 17, 2017.

Also on October 27, 2017, Mitchell filed a request for a domestic violence restraining order against Y.M. Mitchell stated that she wanted a stay away order for herself and her 16-year-old daughter. She also sought to have a move-out order granted to require Y.M. to move out of the Perris home; Mitchell was making the mortgage payments on the loan for the house. Mitchell requested custody of their dog. Mitchell also wanted Y.M. to pay the mortgage on the house. She declared that Y.M. had defamed her character and had been cheating on her. Y.M. tried to take Mitchell's dog on October 26, 2017. The trial court denied Mitchell's request until the hearing on November 17, 2017, because there were no allegations of domestic violence.

On November 3, 2017, Mitchell filed a response to Y.M.'s request for a restraining order. She and Y.M. were married on December 31, 2016. Mitchell alleged that her children, ages 16, 18 and 20, were not mentioned in Y.M.'s request for a restraining order but they were living in the Perris home. Mitchell and her children had been locked out of the Perris home since the temporary restraining order was granted. The couple had no children together. Mitchell agreed to the stay-away order but not the move-out order. She provided documentation that she had turned in her gun to law

enforcement. Mitchell attached mortgage statements for the Perris house and text messages from Y.M.

The requests for domestic violence restraining orders were heard on November 17, 2017. Mitchell has not provided the reporter's transcript from the proceedings with the appeal, but based on the minute order, several witnesses testified including Mitchell, Y.M. and Mitchell's daughter. There is also a notation in the minute order that the "Court had read and considered [the] police report."

The DVPA order was granted after the hearing. It was set to expire on November 16, 2020. Mitchell was ordered to move out of the Perris residence and stay away from Y.M. Mitchell was not to possess any weapons. The request for a domestic violence restraining order made by Mitchell was denied as lacking sufficient evidence of domestic violence committed by Y.M. against Mitchell.

On December 6, 2017, Mitchell filed her notice of appeal. She requested only the clerk's transcript and opted to proceed with no reporter's transcript, agreeing that "without a record of the oral proceedings in superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

DISCUSSION

Mitchell insists the trial court's decision to grant the DVPA order was ultimately based on a police report, which was neither filed nor lodged with the court.

Family Code Section 6320, subdivision (a) provides: "The court may issue an . . . order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually

assaulting, battering, . . . harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.” That order, within the discretion of the court, can be extended up to five years after notice and hearing. (Family Code, § 6345, subd. (a).)

“A granting or denial of injunctive relief is generally reviewed by the appellate court based upon the abuse of discretion standard. [Citation.] This standard applies to the grant or denial of a protective order under the DVPA. [Citation.] In reviewing the evidence, the reviewing court must apply the ‘substantial evidence standard of review,’ meaning ‘ “whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted,” supporting the trial court’s finding. [Citation.] “We must accept as true all evidence . . . tending to establish the correctness of the trial court’s findings[,] resolving every conflict in favor of the judgment.” ’ ” (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143.)

Here, Mitchell essentially asks this court to find the trial court abused its discretion by granting the DVPA order based on a police report never provided to her. Assuming the trial court was required to provide her with the police report, she has not shown error. On appeal, “ ‘A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Denham v.*

Superior Court (1970) 2 Cal.3d 557, 564; *Gee v. American Realty & Construction Inc.* (2002) 99 Cal.App.4th 1412, 1416; *Conservatorship of Rand* (1996) 49 Cal.App.4th 835, 841.) As such, Mitchell must provide an adequate record for review. “[A] party challenging a judgment has the burden of showing reversible error by an adequate record.” (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) Where the party challenging the judgment fails to provide an adequate record as to any issue raised on appeal, the issue must be resolved against that party. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296; *Gee*, at p. 1416.)

Mitchell designated the record not to include the reporter’s transcript of the hearing on the DVPA order. Mitchell claims in her appellant’s opening brief that she was never given a copy of a police report reviewed by the trial court at the hearing because it was not filed or lodged with the court. However, the only evidence before this court is a notation in the clerk’s transcript, “Court has read and considered [the] police report.” Mitchell has not provided the reporter’s transcript detailing the trial court’s comments about the report and this court cannot conclude with certainty that the police report was never seen by Mitchell. Without the reporter’s transcript from the hearing, Mitchell has failed to meet her burden on appeal that the trial court refused to allow her to inspect the police report.

Moreover, Mitchell insists that the police report ultimately influenced the trial court to grant the DVPA order. However, without the reporter’s transcript, this court cannot determine on what basis the trial court decided to issue the DVPA order. At the hearing, several witnesses testified. It is equally plausible the trial court reviewed the

police report, rejected it and decided to issue the DVPA order based on the testimony of the witnesses. The issue must be resolved against Mitchell. (*Maria P. v. Riles*, *supra*, 43 Cal.3d at pp. 1295-1296; *Gee v. American Realty & Construction Inc.*, *supra*, 99 Cal.App.4th at p. 1416.)

Based on the record before this court, Mitchell has failed to demonstrate error.

DISPOSITION

The order of the trial court is affirmed in full. Appellant is to bear her own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)¹

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MILLER
J.

We concur:

RAMIREZ
P. J.

MENETREZ
J.

¹ Y.M. has not made an appearance at this court. Therefore, we do not award her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)